

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
ADOPTING THE AMEMDED JOINT POWERS AGREEMENT FOR  
THE BAY AREA EMPLOYEE RELATIONS SERVICE**

WHEREAS, California Government Code Section 6500 et seq. provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, the City of Milpitas joined the Joint Powers Agreement for the Intergovernmental Employee Relations Service, now known as the Bay Area Employee Relations Service, approved on April 1, 2001; and

WHEREAS, the Joint Powers Agreement has been amended to adapt to changes in service and delivery methods since it was last modified in 1987;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Milpitas authorizes the City Manager to execute the amended Joint Powers Agreement for the Bay Area Employee Relations Service.

PASSED AND ADOPTED this 6<sup>th</sup> day of January, 2004, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

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Gail Blalock, City Clerk

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Jose S. Esteves, Mayor

APPROVED AS TO FORM:

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Steven T. Mattas, City Attorney

# JOINT POWERS AGREEMENT FOR THE BAY AREA EMPLOYEE RELATIONS SERVICE

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**JOINT POWERS AGREEMENT FOR  
THE BAY AREA EMPLOYEE RELATIONS SERVICE**

This agreement is made and entered into on January 1, 2004, by and among the public entities organized and existing under the Constitution or laws of the State of California, hereinafter collectively referred to as "Members" or "Parties" and individually as "Member", which are parties signing this Agreement.

**RECITALS**

Whereas, California Government Code Section 6500 et seq. provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

Whereas, the parties are public agencies as that term is defined in California Government Code Section 6500 dealing with Joint Powers Agreements; and

Whereas, each of the parties to this Agreement are actively involved in employee relations; and

Whereas, the parties have common powers and authority to collect, refine, analyze and use information, research and assistance in their respective employee relations; and

Whereas, each of the parties to this Agreement desires to join together with the other parties for the purpose of consolidating confidential information, research, and assistance functions and services in preparation for and use for labor negotiations and other authorized uses, in order to realize economic and operational efficiencies.

Whereas, the name of the Intergovernmental Employee Relations Service has been changed to Bay Area Employee Relations Service to reflect the expanded membership base of the nine bay area counties,

Now, therefore, for and in consideration of all the mutual benefits, covenants and agreements contained herein, the parties hereto agree as follows:

## ARTICLE 1-DEFINITIONS

The following definitions shall apply to the provisions of this Agreement:

- (a) Agreement shall mean the Joint Powers Agreement for the Bay Area Employee Relations Service.
- (b) BAERS shall mean the Bay Area Employee Relations Service.
- (c) Board of Directors or Board shall mean the governing body of the Bay Area Employee Relations Service.
- (d) County shall mean the County of Santa Clara.
- (e) Management Committee shall mean the Management Committee of the Bay Area Employee Relations Service Board of Directors.

## ARTICLE 2-PURPOSES

This Agreement is entered into by the Members pursuant to the provisions of the California Government Code Section 6500 et seq. in order to consolidate information, research and assistance functions and services in preparation for and use for labor negotiations that are necessary and relevant to the operation of the respective employee relations of the parties. By this Agreement, the parties do not create an agency or entity separate from the parties themselves

The method of implementing these purposes and executing these powers is to provide employee relations services in accordance with the terms and conditions hereof through the staff and facilities of the County of Santa Clara.

## ARTICLE 3-PARTIES TO THE AGREEMENT

Each party to this Agreement certifies that it intends to and does contract with all other parties who are signatories of this Agreement and, in addition, with such other parties as may later be added as parties to and signatories of this Agreement pursuant to Article 17. Each party to this Agreement also certifies that the deletion of any party from this Agreement, pursuant to Article 19 and 20, shall not affect this Agreement nor the intent to contract as described above with the other parties to the Agreement then remaining.

**ARTICLE 4- POWERS OF THE BAY AREA EMPLOYEE RELATIONS  
SERVICE**

BAERS shall have the powers common to its Members and is hereby authorized to do all acts necessary for the exercise of said common powers, including, but not limited to, any or all of the following:

- (a) To provide for the delivery of employee relations services through County employees and at facilities of the County;
- (b) To incur debts, liabilities or obligations in accordance with a duly approved budget;
- (c) To levy and collect fees and charges, including administrative and operating costs, as provided by this Agreement or by law;
- (d) To exercise all powers necessary and proper to carry out the terms and provisions of this Agreement, or otherwise as authorized by law.

**ARTICLE 5- METHOD BY WHICH THE PURPOSE OF THE AGREEMENT  
WILL BE ACCOMPLISHED**

BAERS shall provide for the delivery of employee relations services using employees of the County and at facilities of the County.

**ARTICLE 6- BOARD OF DIRECTORS**

BAERS shall be governed by the Board of Directors which is hereby established and which shall be comprised of one representative from each Member. Each Member shall have one (1) vote. Each Member shall also designate an alternate who shall serve in the absence of its regular representative. The alternate shall have the authority to attend, participate in and vote at any meeting of the Board of Directors when the regular member for whom he or she is an alternate is absent from said meeting.

**ARTICLE 7- POWERS OF THE BOARD OF DIRECTORS**

The Board of Directors shall have the following powers and functions:

- (a) To establish priorities in the performance of services.

- (b) To approve and adopt the annual fiscal year operating budget (July 1 through June 30) of BAERS.
- (c) To receive and review periodic accountings of all funds under Article 13 and 14 of this Agreement.
- (d) To have the power to conduct on behalf of BAERS all business of BAERS.
- (e) To elect from its Members pursuant to Article 9 of this Agreement, a Management Committee to which it may delegate authority to make and implement any decision that the Board is authorized to make under this Agreement, except the following:
  - 1. Action that would require an amendment to this Agreement, under Article 25 herein;
  - 2. Change in the fee schedule;
  - 3. Action that would financially obligate the parties in any way, except as set forth in Article 10;
  - 4. Selection of the President, Vice-President and members of such Management Committee.
- (f) To review all acts of the Management Committee, and shall have the power to modify and/or override any decision or action of the Management Committee upon a majority vote of a quorum of the Board of Directors, unless this would interfere with a legal obligation made by the Management Committee and result in BAERS liability.
- (g) To adopt Bylaws for the conduct of its business consistent with this agreement and with all applicable laws.
- (h) To have such other powers and functions as provided by this Agreement.

#### **ARTICLE 8-MEETING OF THE BOARD OF DIRECTORS**

- (a) **Meetings.** The Board of Directors shall establish its regular meetings. It shall hold at least two regular meetings annually, at a time and place determined by the Management Committee. The Board may hold special meetings as required.

- (b) **Minutes.** BAERS shall keep minutes of regular and special meetings of the Board of Directors and shall as soon as possible after each meeting, forward a copy of the minutes to each member of the Board.
- (c) **Quorum.** A majority of the members of the Board of Directors shall constitute a quorum for the transaction of business. A vote of the majority of those members present at a meeting shall be sufficient to constitute action by the Board of Directors.
- (d) **Compliance with the Brown Act.** All meetings of the Board of Directors, including regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code Section 54950 et seq.

#### ARTICLE 9-MANAGEMENT COMMITTEE

- (a) There shall be a Management Committee of the Board of Directors, which shall consist of seven (7) members, one of which shall be the County. *Two of the members of the Management Committee shall be the President and Vice-President.* The other members of the Management Committee shall be elected by the Board of Directors pursuant to the conditions and terms provided in the Bylaws. The President of the Board of Directors, or the Vice-President in his or her absence, shall also serve as the President of the Management Committee.
- (b) **Compliance with the Brown Act.** All meetings of the Management Committee, including regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code Section 54950 et seq.

#### ARTICLE 10-POWERS OF THE MANAGEMENT COMMITTEE

The Management Committee of the Board of Directors shall have the following powers:

- (a) To prepare the operating budget of BAERS for each fiscal year, subject to review, modification and approval by the Board of Directors, as provided for in Article 8.
- (b) To receive and act upon reports of any sub- committee established by the Board of Directors.
- (c) To create Bylaws as necessary.

- (d) To review new members for acceptance or rejection.
- (e) To solicit performance feedback of BAERS on a regular basis and provide the information to the County.
- (f) In conjunction with a representative of the County, to establish annual performance objectives for the Director, Bay Area Employee Relations Service. The Management Committee shall annually evaluate the performance of the Director, Bay Area Employee Relations Service against the performance objectives established. The County shall consider Management Committee input in the formal County performance evaluation of the Director, Bay Area Employee Relations Service.
- (g) In the event the position of Director, Bay Area Employee Relations Service becomes vacant, the Management Committee and the County shall jointly participate in the recruitment and selection process of a new Director. The Management Committee shall make a hiring recommendation to the County, which has the sole authority to select the new Director, Bay Area Employee Relations Service.
- (h) Have such other powers and functions as are provided for in this Agreement or as delegated by the Board of Directors.

#### ARTICLE 11-MEETINGS OF THE MANAGEMENT COMMITTEE

The meetings of the Management Committee shall be held at least twice a year at a time and date set by the President.

#### ARTICLE 12-OFFICERS OF BAERS

- (a) **President.** The Board of Directors shall elect a President, to hold office for a one-year term, except as hereinafter provided and until a successor is elected. In the event the President ceases to be a member of the Board of Directors, the resulting vacancy shall be filled at the next regular meeting of the Board of Directors held after such vacancy occurs. In the absence or inability of the President to act, the Vice President shall act as President. Should the Vice President not be available, the Management Committee shall name an Acting President who shall serve until the next regular Board meeting. The President serves at the pleasure of the Board,



and receives no compensation for these services. Reasonable expenses incurred on the Board's behalf are reimbursable.

- (b) **Vice President.** The Board of Directors shall elect a Vice President, to hold office for a one-year term, except as hereinafter provided and until a successor is elected. In the event the Vice President so elected ceases to be a member of the Board of Directors, the resulting vacancy shall be filled at the next regular meeting of the Board of Directors held after such vacancy occurs. In the absence or inability of the President to act, the Vice-President shall act as President. The Vice President serves at the pleasure of the Board, and receives no compensation for service. Reasonable expenses incurred on the Board's behalf are reimbursable.
- (c) **Other.** The Board of Directors may create other offices as needed

### **ARTICLE 13-ACCOUNTS AND RECORDS**

- (a) **Annual Budget.** The Board of Directors of BAERS shall adopt an annual operating budget pursuant to Article 7 of this Agreement.
- (b) **Funds and Accounts.** The County shall establish and maintain such funds and accounts as may be required by good accounting practice and as recommended by the Management Committee. Books and records of BAERS shall be open to inspection, with reasonable notice, by representatives from Member agencies.
- (c) **County's Fiscal Report.** The County, within one hundred and twenty (120) days after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to the Board of Directors and each Member.
- (d) **Annual Audit.** The County shall provide for an annual audit of the accounts and records of BAERS. The audit shall meet the minimum requirements prescribed by the State Controller for special districts by the California Government Code.

### **ARTICLE 14-RESPONSIBILITY FOR MONIES**

- (a) The County shall have the custody of and disburse BAERS funds according to the policies and directions of the Board of Directors.

- (b) The County shall assume the following duties described in California Government Code Section 6505.5 including:
1. Receive and issue receipts for all money for BAERS and place it in the County treasury in the account of BAERS;
  2. Be responsible for the safekeeping and disbursement of all of BAERS money so held by the County;
  3. Pay any other sums due from BAERS only upon warrants signed by the public officer performing functions of Controller; and
  4. Report in writing, 15 days after the close of each fiscal quarter, to the members the amount of money held for BAERS, the amount of receipts since the last report, and the amount paid out since the last report.

#### **ARTICLE 15-RESPONSIBILITIES OF BAERS**

BAERS shall perform the following functions in discharging the responsibilities under this Agreement:

- (a) Develop and maintain a confidential Internet based database containing employee relations data as set forth in the Bylaws for use by Members.
- (b) Perform other special services as requested by individual Members related to collection, refinement and analysis of data, and other such research and assistance functions essential for labor relations as set forth in the Bylaws; and
- (c) Have such other responsibilities as deemed necessary by the Board of Directors or Management Committee in order to carry out the purposes of this Agreement.

#### **ARTICLE 16- RESPONSIBILITIES OF THE MEMBERS**

- (a) Responsibilities. Each Member shall have the following responsibilities:
  1. To appoint a representative and an alternative representative with knowledge of the Member's labor relations to the Board of Directors, pursuant to Article 6 of this Agreement.

2. Each Member shall appoint an employee to be responsible for responding to requests for information, and to serve as liaison to BAERS.
  3. Each Member shall pay all fees in accordance with the fee schedule, adopted annually pursuant to the Bylaws, including fines that may be assessed for not meeting member obligations.
  4. Each Member shall provide BAERS with information related to salaries, benefits, labor settlement information as stated in the final Memoranda of Understanding and other data as may be necessary for BAERS to carry out services provided under this Agreement.
  5. Each Member shall comply with all bylaws, rules and regulations adopted by the Board of Directors and Management Committee.
- (b) Confidentiality. Each Member shall have access to all data and information collected by BAERS in preparation for and during periods of labor negotiations that are necessary and relevant to the operation of the respective employee relations of the parties. Each Member agrees to treat such information in confidence and for use only for the purposes contemplated in the Agreement. A Member shall not release any of the information to any entity or other party except in the course of labor negotiations or as consented to by the County. This shall not preclude a Member from such limited reproduction and distribution of such information within its own agency as is necessary for such Member's employee relations activities, nor shall it preclude a Member from using the information for purposes of discussing same with other Members. In the event that a Member receives a California Public Records Act request, subpoena, court order, or other legal document requiring release of the information, or is informed that such document is being requested, the Member shall notify the County in order to permit the County to review the matter and provide a recommendation to insure uniform responses. In its discretion, the County may seek a protective order or other similar order. Members shall be responsible for maintaining effective procedures and controls in respect to web site password security.

The Board may authorize BAERS to release data from the web site or documents in its possession for sale to management officials of non-member public jurisdictions with the understanding that the Liability provisions in Article 18 shall apply.

#### ARTICLE 17-NEW MEMBERS

With the approval of the Management Committee, new members may be added to BAERS. Approval for new members shall be in accordance with the following procedure:

- (a) A public agency shall submit a letter of intent and application to the County;
- (b) The Management Committee shall review the application to determine compatibility with the scope and purpose of BAERS.

Members entering under this Article shall become a party to this Joint Powers Agreement and shall execute such documents as necessary, which shall be appended to this Agreement.

#### ARTICLE 18-LIABILITY

Each party to this JPA Agreement assumes all risks associated with the use of services provided by the County under Paragraph 2 of the Agreement, and will indemnify, hold harmless and defend the County and all other parties to this Agreement from all claims for money or damages arising from alleged errors or omissions of the County.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the County and each Member of this Joint Powers Agreement agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with the use by a party of any services or data provided under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of the use by a party of any services or data provided under this Agreement.

### **ARTICLE 19-WITHDRAWAL**

A Member of BAERS may not withdraw as a party to this Agreement and as a member of the BAERS for a one-year period commencing with the effective date of its participation in BAERS. Following the one-year irrevocable commitment to the BAERS, a Member may withdraw only at the end of the fiscal year, provided it has given BAERS at least three months written notice of its intent to withdraw from this Agreement.

### **ARTICLE 20- EFFECT OF WITHDRAWAL**

The withdrawal of any Member from this Agreement shall not terminate this Agreement and no Member by withdrawing shall be entitled to payment or return of any deposits, any consideration of property paid, or donated by the Member to BAERS, or to any distribution of assets.

### **ARTICLE 21-CANCELLATION**

BAERS shall have the right to cancel any Member's participation in BAERS for non-compliance with the terms of the JPA upon a three- fourths vote of the entire Board of Directors in a regular or special meeting of BAERS where a quorum is present, and with at least 30 days written notice to the Member. Any Member so canceled shall, on the effective date of the cancellation, be treated the same as if the Member had voluntarily withdrawn from BAERS and may be subject to a prorated fee.

### **ARTICLE 22-TERMINATION AND DISTRIBUTION**

- (a) This Agreement may be terminated with
  - 1. The written termination request of three-fourths of the Members, tendered at least six months prior to the end of the fiscal year; or
  - 2. The written termination request of the County, tendered at least six months prior to the end of the fiscal year, and,
- (b) In the event that this Agreement is terminated in accordance with Section (a) of this Article, BAERS shall continue to exist for the purpose of

disposing of any claims, distribution of assets and all other functions necessary to terminate the affairs of BAERS.

- (c) Upon termination of this Agreement, all property of the BAERS shall become the property of the County, under the following terms:
  - 1. Each Member shall be entitled to an electronic copy of the web-based data created for BAERS.
  - 2. Funds of BAERS shall be distributed among the Members in accordance with and proportional to their base annual fee, as defined in the Fee Schedule.
- (d) The Management Committee is vested with all powers of BAERS for the purpose of dissolving the business affairs of BAERS. The decisions of the Management Committee under this article shall be final.

#### **ARTICLE 23-PROVISION FOR BYLAWS AND MANUAL**

The Board shall cause to be developed Authority Bylaws to govern the operations of BAERS. Each Member shall have electronic access to any Bylaws developed under this Article.

#### **ARTICLE 24-NOTICES**

Notices to Members hereunder shall be sufficient if delivered to the administrative office of the respective Member via first class mail, facsimile or electronic mail with receipt confirmation.

#### **ARTICLE 25-AMENDMENT**

This Agreement may be amended at any time by a two-thirds vote of the full membership of the Board of Directors, with the exception of an amendment to Article 22, which shall require a three-fourths vote of the entire Board of Directors.

Signatures shall not be required on any such amendment by those Members, if any, whose Director did not approve the amendment; however, such Members shall nonetheless be bound by the amendment as if it were approved by all Members.

## ARTICLE 26-SEVERABILITY

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

## ARTICLE 27-ARTICLE HEADINGS

All section headings contained in this Agreement are for convenience and reference only.

## ARTICLE 28-TERM OF AGREEMENT

This Agreement is effective on January 1, 2004 and shall continue until and unless terminated as provided in Article 22.

## ARTICLE 29-FULL AGREEMENT

The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

IN WITNESS WHEREOF, the parties hereto have first executed this Agreement by authorized officials thereof on the date indicated below:

**Agency:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Approved as to form and legality:**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

BAERSAGREEMENT91203